

## DECISION MEMORANDUM

**TO: COMMISSIONER KJELLANDER  
COMMISSIONER REDFORD  
COMMISSIONER SMITH  
COMMISSION SECRETARY  
COMMISSION STAFF**

**FROM: KRISTINE SASSER**

**DATE: DECEMBER 28, 2011**

**SUBJECT: GROUSE CREEK WIND PARKS V. IPUC AND IDAHO POWER  
COMPANY; IPUC CASE NOS. IPC-E-10-61 AND 10-62 (SUPREME  
COURT DOCKET NO. 39151-2011).**

On July 27, 2011, the Commission issued a Final Order on Reconsideration affirming its prior decision to not approve two Power Purchase Agreements (PPAs or Agreements) entered into between the Grouse Creek projects and Idaho Power pursuant to the federal Public Utility Regulatory Policies Act of 1978 (PURPA). Order No. 32299. Based upon the express terms of the Agreements, the Commission found that the PPAs were not effective prior to December 14, 2010 – the date on which the eligibility for PURPA published avoided cost rates in Idaho changed from 10 average megawatts (aMW) to 100 kilowatts (kW) for wind and solar qualifying facilities (QFs). Because each of the PPAs requested published avoided cost rates but the projects were in excess of 100 kW, the Commission found that the published rate was no longer available to the projects.

On September 7, 2011, the Grouse Creek projects appealed the Commission's Order to the Idaho Supreme Court. On October 4, 2011, the Federal Energy Regulatory Commission (FERC) issued an Order in a similarly situated case that the IPUC's decision to not approve the PPAs was inconsistent with PURPA and FERC's regulations implementing PURPA. *Notice of Intent Not to Act and Declaratory Order*, 137 FERC ¶ 61,006 (Oct. 4, 2011). On November 3, 2011, in response to FERC's Order, the Grouse Creek Projects, the Idaho Public Utilities Commission and Idaho Power Company (collectively "the Parties") filed a Stipulated Motion to Suspend Appeal and Remand to the Administrative Agency with the Idaho Supreme Court. The Parties maintained that there "is good cause for the Court to grant this Motion in order for the Parties to consider a recent decision issued by the Federal Energy Regulatory Commission

(“FERC”) regarding the subject matter of the appeal.” Motion at 2. The Court granted the Parties Motion on November 22, 2011.

The Parties met informally on December 9 and December 22, 2011, to discuss the possibility of settlement and to outline a procedural schedule for the case on remand. Grouse Creek indicated that it adequately addressed the issue of legally enforceable obligation in its initial filings and on reconsideration. Consequently, the Parties agreed that it would be appropriate for Idaho Power and Staff to file initial briefs in response to Grouse Creek’s prior assertions – giving Grouse Creek the final opportunity to reply.

Based on discussion and agreement between the parties, Staff proposes that the Commission adopt the following briefing schedule:

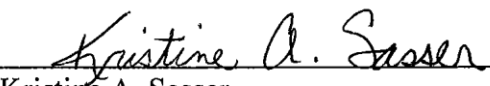
February 6, 2012	Idaho Power and Staff initial legal briefing
February 27, 2012	Grouse Creek reply briefing

The Parties also request that the Commission grant an opportunity for oral argument on the issue of when a legally enforceable obligation was created to be held:

March 7, 2012	Oral argument
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### COMMISSION DECISION

1. Does the Commission wish to adopt the briefing schedule as proposed?
2. Does the Commission wish to grant the Parties request for oral argument?

  
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Kristine A. Sasser  
Deputy Attorney General

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